

CONCLUSIONS

As noted at the outset of this Report, the definitions outlined in the Ethics Act make it clear that the Act applies to members of a board that is: 1) created by statute or executive order, 2) a State Board, and 3) non-advisory in character. The first requirement was discussed only briefly because virtually all boards that come into play in this analysis derive from a statute or executive order. Even most local boards are created by virtue of an *enabling* statute. Consequently, the two main questions addressed were:

- 1) What is a State board? And
- 2) What is a non-advisory board?

Utilizing 1) statutory interpretation, 2) case law, 3) legislative intent, 4) common characteristics of State boards and non-advisory boards, 4) other States' statutory definitions, and 5) other general guidelines and examples to analyze those questions, staff has concluded the following regarding the State Ethics Act and its coverage of certain boards:

- 1) The Act is referring to purely "State" boards and does not cover certain local and regional boards even when those boards a) are created or authorized by statute; b) are carrying out a State proscribed function at the local level; and c) have local members who are appointed by a State board. Examples include the county boards of election and county boards of social services. These boards are local by name and exercise their powers on a purely local level; they implement State policies or create local policies in conformity with State guidelines; none of the members are appointed by a State appointing authority; and while they may derive from an enabling statute, they are not created by name in statute. Certain regional boards such as regional councils of government or regional economic development partnerships similarly do not meet the definition of a State board.
- 2) The Act was intended to cover State boards which are generally: a) created specifically by name in a statute or executive order; b) statutorily provided with detailed purposes, powers, and duties for the Board and specific guidelines regarding membership and operations; c) specifically proscribed with a membership appointed primarily by the Governor, the General Assembly, the Council of State or the Judiciary; and d) formed to fulfill a public purpose.
- 3) A board is merely *advisory* if it was created to provide the following functions: a) study, research, prepare and provide information, advice, or recommendations to any of the three branches of government; b) provide oversight, monitoring, reviewing or auditing of an executive agency; and c) spend public funds *only* for purposes internal to the board (*e.g.*, hiring personnel for the board, reimbursement for expenses related to service on the board, and grants for conducting the boards business).
- 4) A board is *non-advisory* if it was created to exercise administrative or executive functions including: a) adopting, amending and repealing rules, regulations, policies, standards or criteria; b) issuing, renewing, denying, revoking, and suspending licenses; c) approving, awarding and denying State and Federal grants; d) setting